DIRECTIVE ON THE PROTECTION OF COPYRIGHT

Department responsible :	Approved by :
General Administration	Director general
<i>Effective date :</i>	Amended :
January 1 st 2003	July 1 st 2006 and April 12, 2011
References : Copyright Act (R.S.C., c. C-42)	

The *Copyright Act* of Canada confers exclusive rights to authors in order to protect them against any unauthorized use of their work. This protection applies even when a work is used for pedagogical purposes, although the law provides a certain amount of flexibility for educational institutions. Such exceptions, however, remove only a few of the constraints, and the school boards and teachers remain limited in their use of copyright-protected material.

In order to give more leeway to the educational sector, the Ministère de l'Éducation et de l'Enseignement supérieur (MEES) decided to come to a specific agreement with the majority of copyright societies by paying them a lump sum, which gives Quebec educational institutions certain extended rights of use.

The information contained in this Directive is provided solely for guidance and should neither be quoted nor considered as having legal value. It may become obsolete without advanced notice.

1. PREMISES

- 1.1 <u>application</u> This Directive states the copyright protection rules to be observed in using material and tools for pedagogical purposes, whether within the schools or at the head office of Kativik Ilisarniliriniq (KI). These rules apply in the same way to material produced by the School Board, which is also protected against unauthorized use by third parties.
- 1.2 <u>definitions</u> In this directive, the following words or expressions mean:
 - a) COPIBEC: an organization governed by the Union des écrivaines et écrivains québécois (UNEQ), responsible for reproduction rights of literary work in Quebec;

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- b) copyright : in relation to a work means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public;
- c) premises : the place where teaching is carried out;
- d) **MEES** : ministère de l'Éducation et de l'Enseignement supérieur [department of education of Quebec];
- e) musical work : any musical composition with or without lyrics, without distinction between classical and popular music;
- f) protected work : original literary, dramatic, musical or artistic works;
- g) **SOCAN :** Society of Composers, Authors and Music Publishers of Canada;
- h) **SODRAC**: Society for Reproduction Rights in Canada of Composers, Authors and Music Publishers;
- SOPROQ : Société de gestion collective des droits des producteurs de phonogrammes et de vidéogrammes du Québec.

2. COPYRIGHT

2.2

- 2.1 <u>extent of</u> In relation to sole rights related to a work, copyright protection <u>protection</u> includes, among others:
 - a) translation;
 - b) reproduction (on tapes, records, computers, etc);
 - c) publication;
 - d) performance in public;
 - e) communication to the public (radio, television, Internet, etc.);
 - f) public exhibition;
 - g) adaptation and conversion into another form of work.

birth of copyright A work is automatically protected as soon as it is fixed into a nonephemeral material form. The work does not have to be complete, nor definitive. A draft, notes or a detailed plan are sufficient. An idea is not protected, only the form by which it is expressed is protected (book, painting, music, sculpture, photograph, film, computer program, etc.).



- 2.3 <u>official</u> Although copyright is automatically established, it is preferable to registration register it officially at the Copyright Office in order to avoid <u>copyright</u> ambiguities as to the ownership of copyright in case of conflict.
- 2.4 <u>owner of</u> In general, the owner of copyright is:

copyright

- a) the author of the work;
 - b) the employer, if the work was made in the course of employment, in the absence of any agreement to the contrary;
 - c) the person who ordered a photograph, a portrait, or an engraving for valuable consideration, in the absence of any agreement to the contrary;
 - d) another person, if the original copyright owner has assigned copyright.
- 2.5 <u>term of</u> Copyright protection is not indefinite. As a general rule the copyright copyright subsists for 50 years following the death of the author, or following the first publication of the work, where such publication occurred after the death of the author. As for the copyright for a performance by an artist (execution in public), the protection extends to the 50 years following the recording of such performance.
- 2.6 <u>geographical</u> Any work produced by a citizen or a person ordinarily resident in <u>extent of</u> a treaty country of the *Berne Convention* or the *Universal* <u>protection</u> *Copyright Convention* is automatically protected in all treaty countries. Canada is a signatory of all these treaties, as are the majority of industrialized countries. Thus, a work produced in the United States or in France is protected, and copyright regulations pertaining to its use in Canada must be respected.

Procedure		
2A)	A musical work composed by Beethoven is copyright since the author has been dea orchestra could, therefore, perform thi royalties and could even record its perfo the use of this recording, the orchest another type of protection, called copyrig recording, for 50 years following the o Beyond this period, anybody would be at without violating the law. (See Section 5 for educational institutions.)	d for over 50 years. An s work without paying rmance. With respect to tra would benefit from ght in performer's sound date of such recording. ble to use this recording



3. EXCEPTIONS TO INFRINGEMENT FOR EDUCATIONAL INSTITUTIONS

- 3.1 <u>exceptions for</u> The law provides for a few exceptions for educational institutions <u>educational</u> where it is possible to use a work without the specific <u>institution</u> authorization of its author. Such uses, however, remain very restricted.
- 3.2 reproduction Teachers may, for pedagogical purposes and on the premises of the institution, make a manual reproduction of a work onto a dryerase board, flip chart or other similar surface. They may also project an image of that copy using an overhead projector or similar device.
- 3.3 <u>examinations</u> The law allows for the reproduction, translation, performance or <u>or tests</u> communication of a work or other matters subject to copyright on the premises of the institution and within the context of examinations or tests.
- 3.4 <u>plays, music</u> The live performance in public of a work (song, play, etc.) by and live students, as well as the listening to a sound recording of a work performances (on CD, etc.) or the viewing of or the listening to a work a the time of its retransmission by telecommunications are permitted. These acts must be done on the premises of the institution for pedagogical purposes and not for profit.
- 3.5 <u>news reporting.</u> It is possible for a school to reproduce (on video cassette...) a <u>excluding</u> single copy destined to students for pedagogical purposes of <u>documentaries</u> television or radio emissions of news reporting, providing it is not a documentary. This right to reproduce is valid for one year from the date of reproduction, following which, royalties must be paid out or the reproduction must be destroyed.
- 3.6 <u>documentaries</u> A television or radio documentary emission may be reproduced in a single copy destined to students for pedagogical purposes, but this reproduction must be destroyed within 30 days if royalties are not paid out.
- 3.7 <u>mandatory</u> It is mandatory to record information related to reproduction, information destruction and public performance of any copyright work, and the school must label copies of such work or materials so reproduced.



3.8 <u>KI</u> The pedagogical material produced by KI may contain short publications excerpts of literary works that are protected and already published where such works are not intended for use in pedagogical institutions. If used, the source must be mentioned, and no more than 2 excerpts of the same author may be used within the 5 following years.

Procedure		
3A)	limitations to	The reproduction of a work on acetate or similar material, such as
rep	roduction on	slides, is not permitted if such work is available in Canada, for a
ac	etate, slides,	reasonable price and within a reasonable time or if it is available
	<u>etc.</u>	under a license from a collective society under the same
		conditions.

4. USE OF LITERARY WORKS BY THE BOARD AND ITS SCHOOLS

The above-listed exceptions with respect to reproduction give very little latitude to teachers in the use of a literary work for educational purposes, and in most cases, royalties remain payable. However, an agreement was concluded between the MEES and COPIBEC in order to consolidate the payment of royalties, which will be made by MEES, thereby allowing a wider use of literary works for pedagogical purposes.

- 4.1 <u>literary work</u> A literary work means a book or an article from a newspaper or periodical.
- 4.2 <u>agreement</u> The agreement on reproduction of literary works in educational <u>concluded by</u> institutions providing pre-school, elementary and secondary <u>MEES</u> education, stem from an accord entered into by COPIBEC, representing authors and publishers, and the MEES.
- 4.3 <u>license granted</u> COPIBEC grants to users in educational institutions a global license for limited reprography, which gives them access to thousands of Canadian and foreign works protected by copyright.
- 4.4 <u>application</u> Pursuant to the license granted to the MEES, the term "reproduction" means reproduction, on paper or acetate, done by means of a reprography process, such as photocopy, xerography, duplication (stencil), manual transcription or drawing (including tracing) and any similar process, or done by means of facsimile or photocopier.
- 4.5 <u>royalties paid</u> In consideration of the license granted, the MEES has undertaken <u>by MEES</u> to pay a financial compensation to authors for the reproduction of their works.

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The agreement on reproduction permits the following

4.7 reproduction For the sole purpose of educational services, users in institutions limited to 10% providing pre-school, elementary and secondary education, as or 25 pages well as in school boards, are authorized to reproduce the lesser of 10% or 25 pages of a work.

Notwithstanding the preceding limitations, it is also permitted to reproduce in its entirety a tale, a short story or a poem included in a compilation, providing the total number of pages reproduced do not exceed the lesser of 10% or 25 pages of the compilation.

Users may also reproduce in its entirety a periodical or newspaper article, providing the total number of pages of the selected text does not exceed the lesser of 10% or 25 pages of the periodical or newspaper.

The agreement on reproduction does not permit the following

4.8 prohibitions The agreement prohibits the reproduction of unpublished works, of sheet music, as well as the reproduction of separate photographs and illustrations. In addition, the agreement does not apply to works appearing on the COPIBEC exclusion list (See http://www1.copibec.qc.ca/?acition=usedps_psexclusion

Except for excerpts used for purposes of examination, testing or evaluation, reproductions taken from a protected work may not be inserted in, joined with or annexed to other documents. For example, the agreement does not allow for compilations or anthologies to be made from reproductions of protected works.

The digital reproduction of a work (CD-ROM, data banks, etc.) are excluded from the agreement.

4.9 <u>prohibition</u> Reproductions produced may not be sold for motive of gain to <u>to sell</u> student or others. However, users are authorized to recover the cost of reproduction, that is to sell copies at cost.

Procedure		
4A)	<u>verification</u>	Before reproducing a work, users must ensure that it does not
	<u>before</u>	appear on the list of exclusions established by COPIBEC, because
	reproducing	the agreement prohibits the reproduction of certain works All
		other works may be reproduced by users.

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4B) reproduction Users who wish to reproduce a work beyond the limitations beyond provided for in the agreement on reprography must contact limitations COPIBEC to obtain a special authorization. royalties payable Costs related to obtaining such an authorization shall not be assumed by MEES. 4C) data on material The distribution between individual authors and publishers of reproduced reproduction royalties paid by MEES to COPIBEC is determined through statistical surveys. However, it remains important to verify which documents have actually been distributed to students, and COPIBEC can, with the collaboration of MEES, collect data from target groups comprised of members of the teaching and administrative staff. 4D) identification on Users of educational institutions and school boards must indicate. reproduced on each set of reproductions, the name of the author and of the materials publisher, the title of the work, the date of publication and the page numbers reproduced. 4E) nomination The person designated by KI as responsible for the application of of a person the agreement on reproduction is the Associate Secretary-

5. USE OF A MUSICAL WORK BY KI AND ITS SCHOOLS

responsible General, at the Administrative center.

Playing or performing a work

- 5.1 <u>exceptions to the</u> As described in Section 3.4, it is permitted in certain <u>copyright act</u> circumstances to play a sound recording of a musical work (on CD, cassette, etc.) for pedagogical purposes.
- 5.2 <u>agreement</u> In order to broaden the exemption to the Copyright Act the MEES <u>between MEES</u> concluded an agreement with SOCAN, which represents the <u>and SOCAN</u> composers, authors and music publishers of Canada. This agreement allows for the playing of a musical work for nonpedagogical purposes and the performance of such work by students.
- 5.3 <u>license granted</u> SOCAN grants to schools a license covering the playing of any work from the world repertoire or the performance of such work by students, without requiring and authorization or paying royalties. Activities to which the agreement applies are:

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- a) dances, Halloween, Christmas and Easter celebrations, winter and green class. These activities may not be open to the public, even for the funding of extracurricular activities;
- b) parties organized for the staff, except where spouses or friends are invited;
- c) school proms held in the educational institution. This exception does not apply if the prom is held outside the educational institution;
- concerts given by the school band or by the students or staff;
- e) student radio.

Reproduction of a work

- 5.4 <u>incorporation of</u> With respect to the reproduction of a musical work contained on <u>a musical work</u> a compact disc, LP album or cassette for the purpose of incorporating into a video or other medium produced by KI, its teachers or students, there is an agreement between the MEES and SODRAC and SOPROQ which allows certain uses. However, contrary to the playing or performing of musical work as described in sections 5.1, 5.2 and 5.3, this agreement allows reproduction of work of authors listed in their databank accessible at <u>www.sodrac.com</u> under the section "who we represent".
- 5.5 <u>payment is</u> In the case cited in section 5.4 above, if the material in which mandatory music was incorporated is broadcast in public, rather than exclusively for pedagogical purposes or extracurricular activities, a license must be obtained from SODRAC and related royalties must be paid.

6. USE OF CINEMATOGRAPHY WORK BY KI AND ITS SCHOOLS

6.1 <u>works specific</u> A work specifically designed for educational purposes by a <u>to education</u> specialized producer is in general sold with the permission to rebroadcast without restriction. Productions from NFB, Télé-Québec, Télé-Ontario, etc. are generally royalty-free when purchased.



- 6.2 <u>works intended</u> Rebroadcasting of a film intended for the general public is not for the general royalty- free, and even the purchase of the video cassette of such public a film does not permit its viewing in a public place, such as a classroom. Productions such as those of Walt Disney, Warner Brother, Universal Studio, etc. may not be viewed in a classroom without the purchase of a mandatory license obtained from "Les Films Criterion" or from "Audio Ciné Films".
- 6.3 <u>prohibition</u> KI did not conclude an agreement with collective societies in this area. Consequently, it is illegal to view, use or reproduce a film described in section 6.2 on the premises of KI.

Procee 6A)	borrowing from	The resource center of KI owns a large collection of videos related to education, which may be borrowed by schools and viewed by students without any restriction. Each school has the list of videos available.
6B)	<u>violation</u>	A teachers who owns or rents a Walt Disney film, or who tapes it when broadcast on TV and shows it to his students, whether during or outside school hours, violates the law and may be exposed to legal proceedings.

7. WORK PRODUCED BY KI

- 7.1 <u>symbol to affix</u> To clearly indicate that a work produced by the School Board is protected by copyright, each copy of a work produced by KI should bear the symbol © followed by the name of KI, and the year of the first publication of the work.
- 7.2 <u>authorization /</u> Any authorization to use the work produced by the Board provided <u>use by third</u> to individuals or entities from outside the Board, shall be <u>parties</u> previously approved by the Director General. Particular conditions may be attached to any use, such as:
 - user fees
 - mention of the KI property rights
 - no resale to be allowed
 - etc.



8. APPLICATION OF THIS DIRECTIVE

- 8.1 <u>previous</u> provisions The present directive replaces all other directives of the Board pertaining to this subject, while respecting the policies adopted by the Council of Commissioners where applicable. If such policies are adopted, the provisions of these policies will be integrated into this directive for the benefit of the reader.
- 8.1 <u>responsibility</u> The Associate Secretary-General is responsible for the application of this Directive.



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